

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CIVIL APPLICATION No. 11252 of 2007
With
SPECIAL CIVIL APPLICATION No. 11253 of 2007
To
SPECIAL CIVIL APPLICATION No. 11255 of 2007**

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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Appearance :

MR SN SHELAT, SENIOR COUNSEL assisted by MR CB DASTOOR for the Petitioners
MR JK SHAH, ASSISTANT GOVERNMENT PLEADER for the Respondents

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 25/07/2007

COMMON ORAL JUDGMENT

1. **RULE.** Mr.Jaswant K.Shah, learned Assistant Government Pleader waives service of Rule on behalf of the respondents.

2. Heard Mr.S.N.Shelat, learned senior counsel with learned

advocate Mr.C.B.Dastoor for the petitioners.

3. The grievance ventilated in this petition is with regard to the orders passed by the Secretary (Appeal) and the Collector, Banaskantha at Palanpur dated 21.11.2006 and 04.08.2000 (sic - 04.09.2000), respectively.

4. Mr.Shelat, learned senior counsel could point out that there is some discrepancy in the two orders on material point, viz. the Collector has stated in his order dated 04.09.2000 that the property can be disposed of as an independent unit, whereas the Secretary (Appeal) has considered the property not capable of being disposed of as an independent unit.

Learned senior counsel for the petitioners could also point out that the two authorities have erred in not taking into consideration the opinion given by the Deputy Executive Engineer, National Highway Division, Palanpur dated 21.06.2000 (Annexure-'F' to the petition).

5. Learned senior counsel for the petitioners submitted that this lead to the error in passing the two aforesaid orders, which are having self-contradictions and also overlooking the aspect which is material in deciding the case of the petitioner.

6. In view of above, it is deemed fit that if the matter is remanded to the Collector, quashing and setting aside orders dated 04.09.2000 and 21.11.2006, to decide the same afresh after taking

into consideration the opinion of the Deputy Executive Engineer (Annexure-'F' to the petition), the ends of justice will be served.

The orders are accordingly quashed. The matter is remanded to the Collector to decide the same afresh after taking into consideration the opinion of the Deputy Executive Engineer, National Highway Division, Palanpur.

7. At the request of Mr.Jaswant K.Shah, learned Assistant Government Pleader, it is clarified that if required, the Collector can obtain fresh opinion from the Deputy Executive Engineer, National Highway Division, Palanpur.

It goes without saying that the Collector will decide the matter in accordance with law without being influenced by the earlier orders passed by the authorities and the same being quashed by this Court.

8. Rule is made absolute with no order as to costs. D.S. Permitted.

(RAVI R.TRIPATHI, J.)

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